IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No. 69 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE A.L.DAVE

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANAR CHEMICALS INDUSTRIES - Appellant(s)

Versus

USHA INTERNATIONAL (INDIA) - Defendant(s)

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Appearance :

MR AC GANDHI for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

Date : 01/09/2005

ORAL JUDGMENT

By this Appeal from Order, the plaintiff in Civil Suit No.129/1991 pending before the City Civil Court, Ahmedabad, challenges the orders passed by the learned Judge of the City Civil Court, below Exh.9 and Exh.12 in the said suit.

2.Exh.9 application was given by the respondent herein praying for stay of the suit in light of arbitration clause in the agreement in question.\

2.1Exh.12 application was tendered by the respondents – original defendants praying that City Civil Court, Ahmedabad will have no jurisdiction and Courts at Delhi will have jurisdiction.

3.The learned Judge of the City Civil Court, Ahmedabad passed order on 18th June, 1992 below Exh.9 holding that the suit is required to be stayed.

3.1Application Exh.12 also came to be decided by the learned Judge on 18th June, 1992 holding that City Civil Court, Ahmedabad had no jurisdiction and, therefore, plaint be returned to the plaintiff as per provisions contained in Order – 7 Rule – 10 of C.P.C., with presentation before appropriate forum.

4.By this appeal, both the orders are challenged. Learned Advocate Mr.Gandhi for the appellant submitted that these two orders passed on the same date are self-conflicting and could not have been passed. According

to him, order below Exh.9, once passed, Exh.12 application could not have been decided by the trial Court. He submitted that although both the applications decided on the same date, Exh.9 being first in chronology that order has to be taken as passed first in point of time. He submitted that if converse situation is considered, then also, once the Court held that it has no jurisdiction, the Court could not have decided Exh.9 application. Under the circumstances, the orders may be set aside.

4.1However, learned Advocate Mr.Gandhi submitted that when the order was passed old Arbitration Act was in force. Now, the new Act has come into force and appropriate action will have to be taken in the matter, as the suit is pending.

4.2Learned Advocate Mr.Gandhi considering the peculiar situation that has arisen, does not press challenge to order passed below Exh.9 staying the suit. But, he seriously challenges the order below Exh.12 passed by the Court below on the ground that once the proceedings were stayed, Exh.12 application could have been decided.

5. Though, notice has been served on the respondent, the respondent has chosen not to contest this appeal and the matter therefore, proceeds ex-parte against the respondent.

6. Now that the challenge is limited to order below Exh.12 application on question of jurisdiction which came to be passed by the Court below after staying the proceedings in light of provisions contained in the old Arbitration Act and a covenant in the agreement in question as to arbitration. The said order goes against its own order below application Exh.9 staying the suit and therefore, that order could not have been passed. This Court may hasten to add that the said order below Exh.12 is set aside by this Court, only on the above ground without making any observations on jurisdiction aspect and it would be open for parties to agitate the same before the Civil Court again, who will decide the same in accordance with law.

7. Appeal therefore, partly allowed. Order below Exh.9 under challenge stands confirmed in light of the fact that the challenge to it is given up by the appellant. Therefore, application below Exh.12 deciding the

question of jurisdiction is set aside and the same would be heard and decided by Court afresh in accordance with law, since the suit is pending. There shall be no order as to costs.

(A.L.DAVE, J.)

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